



# RAVALLI COUNTY ATTORNEY

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## MEMO

TO: Karen Hughes, Planning Department

CC: Ravalli County Commissioners

DATE: December 5, 2006

FROM: George Corn 

RE: Effect on pending subdivision applications of Interim Zoning Regulation passed on November 7, 2006, limiting subdivisions to a density of one residence per two acres

Dear Karen:

You have asked me the effect of the new interim zoning regulation on subdivision applications in the pipeline. Obviously, all subdivision applications that meet the density requirement of the interim zoning regulation should proceed through review in a regular fashion, which I understand you have been doing. Also, by the terms of the interim regulation itself, any proposed subdivisions that received conditional or final approval prior to the vote should also proceed. The question is, what happens to those subdivisions in the sufficiency or review process that do not meet the density requirement?

In general, proposed subdivisions that do not meet the requirements of the new interim zoning regulation can only proceed through review if a developer's rights have vested. In most jurisdictions, vesting does not occur until after the final discretionary act by the board of county commissioners. Specifically, Montana case law makes clear that a person's right in any particular subdivision does not vest merely by the filing of an application. *See, e.g. Town Pump, Inc. v. Red Lodge*, 1998 MT 294, 292 Mont. 6, 971 P.2d 349 (holding that applications for building permits may be denied based on new zoning regulations absent substantial reliance); *Cook v. Ravalli County*, Montana 21<sup>st</sup> Judicial District Court, Cause No. DV 96-205, Opinion and Order issued May 13, 1997 (filing of a plat and preliminary work on a subdivision does not create a vested property right to develop the subdivision). **Therefore, any pending subdivision applications that have been submitted but not conditionally approved must comply with the density requirement of the interim zoning regulation.**

Note that there is a variance procedure outlined in the interim zoning regulation itself. You should, and probably already have, advise the Commissioners that a Board of Adjustment needs to be appointed pursuant to MCA § 76-2-221 so that Board may consider zoning variance requests within the timelines set forth in Montana law.